



NATIONAL PRESIDENT

Ken Foster OAM JP
PO Box 97
MINTO NSW 2566

NATIONAL SECRETARY

Graham Anderson OAM JP
PO Box 97
MINTO NSW 2566

Website: <http://www.vvaa.org.au>

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Veterans Compensation and
Rehabilitation Inquiry
Productivity Commission
GPO Box 1428
Canberra ACT 2604

Submission to the Productivity Commission Review into the Compensation and Rehabilitation of Veterans 2018.

In this submission the Vietnam Veterans Association of Australia (VVAA) will address the specific questions asked in the Productivity Commission issues paper.

QUESTION

What should the priority objectives for veterans' support be? Why? What principles should underpin the legislation and administration of the system?

VVAA Response:

Firstly, for members of the ADF, to provide medical and rehabilitation support to those members with the primary objective of them being able to continue their employment in their branch of the ADF.

Secondly, for those members who are discharged from the ADF because of physical and/or mental disabilities or illnesses, to provide Medical, Rehabilitation, and Financial support sufficient to enable veterans to re-assimilate back into or continue with their civilian pursuits.

Thirdly, for those ex-members of the ADF whose illnesses and/or disabilities due to their service become apparent later in their lives.

Military service is unique. In both Peace time and during War, all military personnel are trained, some as their primary function, to kill other human beings. Efficient and effective training simulates the horrors of war, including killing others, even for those who do not ultimately experience war.

However, the horrors of war once seen, cannot be unseen, once experienced, cannot be unexperienced. The Association is of the firm view that medical, compensation and rehabilitation support should be more beneficial to those veterans who have served in war or in war like conditions.

Other principles that should underpin the legislation and administration of the veterans' support system include;



“Honour the dead - but fight like hell for the living”

- Just as Military service is unique, so must veteran's support be unique. There is no direct civilian equivalent to Military service, so the legislation and administration of veteran's support should not be measured by civilian standards.
- Recognition that while comparisons may be made between military service and conditions with other high risk occupations such as the Australian Federal Police and first responders generally, all other high risk occupations are not prohibited from enjoying the benefits of industrial representation and disputation processes.
- Legislation and administration should be both compassionate and sympathetic.
- The compensation system (for disabilities and illnesses) should be seen as part of the whole package of compensation and remuneration for members of the ADF, including pay and allowances. It is suggested that to not do so risks a distortion in the labour market. This might mean that the current policy settings for the Defence Force Remuneration Tribunal will have to be adjusted
- The policy underlying the compensation system and future legislation should include the test that it is workable in a time of defence emergency and expansion of the ADF.

QUESTION

Is the current system upholding these priority objectives? Where are the key deficiencies in the system?

VVAA Response:

The current system is not based on all the above objectives and principles.

Key deficiencies in the system include;

1. Complicated and sometimes conflicting legislation, outdated computer systems due to inadequate funding (it is noted that funding has increased), and symptoms of inconsistency in decision making by delegates;
2. A lack of public documentation of the policies and principles on which the system (and legislation) is based; and
3. A need for a broadening of the capabilities of the senior officers in the Department of Veterans' Affairs.

In respect to point three above, it is argued that;

- In view of the need for the Senate Inquiry into Suicide by Veterans;
- The extent of the recommendations contained in the Senate Committee's Report; and
- The details of the many issues put forward in the large number of submissions, many of which were either made anonymously or not published at all;

it is curious that in the current debates regarding the department and the system there has been little or no questioning of the competencies and skills held by senior officers of the Department of Veterans' Affairs, and especially of the Repatriation Commissioners appointed under the two Acts, the VEA and MRCA.

It is suggested that, especially in respect to the three Commissioners of the Repatriation Commission, because of the similarity of the backgrounds of these three officers there is a lack of some of the competencies required to the administer, at the highest level, the department.

It is submitted that, as allowed under Section 182 of the VEA, the Minister for Veterans' Affairs should appoint two further commissioners drawn from persons with appropriate experience and competencies gained at a high level outside of the ADF and other government service.

QUESTION.

What are the key characteristics of military service that mean veterans need different services or ways of accessing services to those available to the general population? How should these characteristics be recognised in the system of veterans' support?

VVAA Response:

The demands of military service have no comparison in civilian occupations, no other occupation is as demanding on the physical and mental health of an individual.

This demand should be recognised by the adoption of the most beneficial legislation and administration systems.

Most services provided to veterans and their families are provided by mainstream service providers. The notion that in some cases services may be duplicating those available to the general population needs to be treated with care as either;

- the so-called duplication may be justified by the unique nature of military service, such as in the case of the Veterans and Veterans Families Counselling Service; or
- may be totally inappropriate, such as the suggestion by a Federal MP that disabled veterans should be looked after by the National Disability insurance Scheme.

QUESTION

What is the rationale for providing different levels of compensation to veterans to that offered for other occupations, including people in other high-risk occupations such as emergency services workers? Are there implications for better policy design?

VVAA Response:

While the service of emergency service workers is recognised and appreciated there is a difference where military can be ordered to enter a workplace where it is more likely than not they will be killed; the casualties of war have no comparison in the civilian world.

Further, the focus of training for emergency service workers is to defuse situations, restore and maintain the peace and save lives, whereas the focus of military training for war is the opposite.

As noted earlier in this submission, other higher risk occupations such as emergency workers, police and other first responders have an ability to seek levels of compensation through industrial processes, including disputation, and political activities. None of these avenues are available to members of the ADF which emphasises the need for better policy design.

QUESTION

Are differences in support and ways of accessing support based on different types of service (such as operational, peacetime and Reserve service) justified?

VVAA Response:

The demands of training for war are higher than the demands of any other employment including that of emergency service workers. Training for war simulates, as closely as possible, the actual conditions being trained for and the risk of death or injury is higher than in any other occupation.

However, operational service and engagement in combat create living conditions and threats to life and limb that test the moral fibre and mental and physical capabilities of individuals to an extent not practicable in a simulated workplace or training scenario.

Support for veterans of military operations should be, unequivocally, more beneficial than for members of the ADF who have not endured the threats and stresses of operational service. We suggest that the extension of the definition of the term “veteran” to mean any person who has spent at least one day in the ADF can cause confusion in the discussion about “veterans” benefits. Consideration now needs to be given to a form of terminology that defines those members of the ADF who have served in war and war-like situations, such as the previous term “returned servicemen or women.

QUESTION

What are the sources of complexity in the system of veterans’ support? What are the reasons and consequences (costs) of this complexity? What changes could be made to make the system of veterans’ support less complex and easier for veterans to navigate?

VVAA Response:

The sources of complexity in the system of veterans’ support are found in poor policy design resulting in legislation that reflects the policy deficiencies but nonetheless has been successfully introduced and passed into law by various Australian governments.

A consequence is that various legislations can, and often do, cross over the period of an individual’s military service. The vast majority of Vietnam veterans are covered by the Veterans Entitlement Act 1986 however if they are exposed to the other legislation entitlements can be clouded and often unable to be accessed.

One reason for this complexity is that while consultation with the veterans’ community occurs when legislative changes or amendments are proposed there is often less consultation about the policy changes that are the basis of legislative change. This results in veterans and ESOs debating the wording of the legislation as compared to policy.

Significant changes to the system of veterans’ support will be difficult given the current legislation and/or the introduction into DVA of senior officers with broader experience relevant to the mission of the department but gained outside of government service.

QUESTION

Can you point to any features or examples in other workers’ compensation arrangements and military compensation frameworks (in Australia or overseas), that may be relevant to improving the system of veterans’ support?

VVAA Response:

Generally, comparisons with civilian workers compensation cannot be made considering the conditions and requirements of service between the two areas of employment.

It may be relevant to this review that unlike the ADF, in some occupations/industries employee packages for compensation for risks are negotiated and agreed as part of the total employment compensation package.

QUESTION

Is it possible to consolidate the entitlements into one Act? If so, how would it be done? What transitional arrangements would be required? How might these be managed?

VVAA Response:

Nothing is impossible, but we doubt if it would be practical to consolidate the entitlements into one act.

The Vietnam Veterans Association is opposed to any consolidation or amalgamation of the VEA 1986 and to any amendments to that Act that removed or diluted current benefits under that act.

QUESTION

Are there approaches, other than grandfathering entitlements, that can preserve outcomes for veterans receiving benefits or who may lodge a claim in the future?

VVAA Response:

The current financial offsetting provisions could be a model for an “On setting” provision where the veteran could choose the most beneficial legislation to suit his or her individual circumstances and combine all entitlements under one legislation.

QUESTION

How could the administration of the claims and appeals process be improved to deliver more effective and timely services to veterans in the future?

VVAA Response:

We believe that an active and well-trained advocacy service can assist the department deliver services; the more access advocates have to DVA systems the smoother the process can become.

QUESTION

Are there diverging areas of the claims and appeals process under the different Acts that could be harmonised?

VVAA Response:

The electronic on-line claim form allows for the department to identify, and apply, the most appropriate legislation.

The alternative of forms available for individuals to lodge “paper” claims does not allow for this type of claim and remains specific to each legislation,

A single claim and appeals form across legislations would harmonise the process.

QUESTION

Are there aspects of the claims and appeals process that result in inequitable outcomes for veterans, such as limitations on legal representation?

VVAA Response:

There is no real limitation, other than a financial cost, in applicants having at least some degree of legal representation or advice. The current systems, including advocacy, allow many veterans to lodge claims successfully without legal advice and to retain the totality of that financial compensation.

The inability of a veteran to have legal representation at the VRB is unnecessary and unfair and it has the potential to increase stress on a claimant. It is also illogical given that a claimant can have legal representation through the Alternative Dispute Recognition process, but if that process fails and the claim reverts to the VRB the right to legal representation is removed.

It is noted that the majority of the members of the VRB have legal qualifications and very few have qualifications in physical and mental health, the subject matter of most claims. This indicates that the VRB is a “legal process”.

In at least one jurisdiction (WA) the VRB frequently takes a black letter law approach to a case thereby causing stress to the claimant (and the advocate) and further processes.

QUESTION

Will the Veteran Centric Reform program address the problems with the administration of the veterans’ support system?

VVAA Response:

This program appears to be improving the processes; that said, it is still in a development stage and has a long way to go before it solves all the problems in hand.

QUESTION

Are advocates effective? How could their use be improved? Are there any lessons that can be drawn from advocates about how individualised support could be best provided to veterans?

VVAA Response:

Over the years volunteer advocates have assisted many veterans obtain their entitlements. The introduction of the Advocacy Training and Development Program (ATDP) further improve this process, and should be recognised as beneficial.

Many advocates are from the Vietnam cohort of veterans and as they age and retire it is doubted that volunteer advocates will be as numerous, implying a need for paid advocates or legal representation. It is suggested that while some veterans may be capable of paying for advocacy services and/or legal representation, some may be unable to pay.

This Association suggests that there is a need for an ADF specific Legal Aid Fund designed to provide financial assistance for those veterans who need paid advocacy support or legal advice but do not have the financial capacity to engage such advice.

QUESTION

Have the Statements of Principles helped to create a more equitable, efficient and consistent system of support for veterans? Are there ways to improve their use?

VVAA Response:

This Association considers that many advantages have flowed from the use of the Statements of Principles and supports their continued use. We do not support the view that the SOPs are insufficiently flexible.

QUESTION

Do the governance arrangements for the veterans' support system encourage good decision making — from initial policy development to its administration and review? If not, what changes could be made?

VVAA Response:

The current governance arrangements are often difficult to understand, particularly where they differ between legislations. The numbers of appeals and reviews of initial decisions indicates the degree of interpretation by delegates leaves a lot to be desired and should be simplified.

Comment has been made earlier on the limited range of competencies and corporate experience held by some senior officers of DVA such as the Repatriation Commissioners. It is our view that there is a need for some of the Commissioners to have a broader set of skills and experience than currently in place and that this would enhance policy development and governance arrangements.

QUESTION

Are incentives sufficiently aligned between agencies, or are there areas of conflict that could be better managed? If there are any incentive problems how can they be resolved?

VVAA Response:

There should be no need for incentives between agencies to apply a beneficial legislation, the incentive should only be to provide an accurate assessment of a veteran's situation.

QUESTION

Is the veterans' support system sufficiently transparent and accountable for both veterans and the community?

VVAA Response:

Support from the department is handicapped by a degree of distrust and confusion within the veteran community. Dealing with the military bureaucracy has, in the case of many veterans, led to a general distrust in government. Support from peers and an educated ex-service based advocacy and support structure can reinforce a trust in advice received and decisions made.

DVA has committed staff resources to its communication function but, in our view, there is a lack of awareness of the need for customer awareness and/or public relations functions to boost transparencies. Examples of this are recent changes to senior positions in the Veterans and Veterans Counselling Service (VVCS), where there was an absolute lack of information provided to veterans of the changes. Similarly, the "re-branding" exercise of the VVCS has not been communicated well to veterans and the community.

In terms of consultation with ESOs, we have commented earlier that while consultation occurs when legislative change is proposed there is less transparency about the policy changes that underlie new legislation.

QUESTION

What role should ESOs play? Are there systemic areas for improvement in the ESO sector that would enhance veterans' wellbeing?

VVAA Response:

The ESO support system has proven to be effective and manageable. The funding of advocacy services both welfare and compensation (including appeals and reviews) is from a client point of view more cost effective than having to use the civilian based legal system. ESO's should be encouraged and supported in providing first line services.

QUESTION

What obligations should be placed on the ADF and individual unit commanders to prevent service-related injuries and record incidents and injuries when they occur? To what extent do cultural or other issues create a barrier within the ADF to injury prevention or record-keeping?

VVAA Response:

Within the context of military training the ADF and individual unit commanders should be no less responsible for the provision of a safe workplace than other Australian employers.

In some cases, service related injuries are part of military service and cannot be avoided, recording of incidents and injuries should be mandatory at all levels. Individuals should be required to report injuries at the time and ensure a record is on the service medical records. (With a copy of the report sent to the member,) suggest delete, an ADF admin matter.

(There should be SOPs raised as guide lines for all unit commanders to followed.) Ditto

QUESTION

The ADF is not financially accountable for the cost of compensation or for the cost of treating service-related injuries and illnesses after a veteran leaves the ADF. Is this a barrier to the ADF having an adequate focus on preventing injury and illnesses and providing early intervention and rehabilitation support? If so, how might this be remedied?

VVAA Response:

All service related injuries and diseases accepted by DVA are caused by military service in some way or form. DVA responsibility, on behalf of the government, should be to attend to the treatment, rehabilitation and compensation of veterans who are no longer members of the ADF.

As noted above, the ADF is responsible to provide, (in the context of ADF training and operations) a safe workplace for its members and medical treatment and rehabilitation to a "fit to work" (in the ADF) standard for those injured or ill, until it is clear that further treatment or rehabilitation is unlikely to make an ADF member "fit for work". The ADF should be financially accountable for this process.

QUESTION

Is the package of compensation received by veterans adequate, fair and efficient? If not, where are the key shortcomings, and how should these be addressed?

VVAA Response.

Compensation fairness is a subjective question and many would consider that compensation should be related to earnings at the time of injury and others consider it should also be related to loss of future earnings.

Disability pensions are indexed against wage and inflation indices but economic indices (generally being a parcel of factors) do not always accurately reflect all the increases in the costs of living experienced by those veterans who are solely reliant upon a disability pension for the major compensation of their inability to have gainful employment, such as the Special Rate Disability Pension (SRDP). Structural changes (such as the recent decision about the minimum wage) flow on to cost of living factors that are not always reflected by changes in the indices used for DVA pensions.

In recent times the need for structural adjustments to Australian pensions was recognised by the Australian Government and all Australian pensioners received an increase not related to indexation, but disability pensions for veterans were excluded from that structural increase.

A key shortcoming in determining the fairness of DVA disability pensions is that a permanent mechanism for this function of government does not exist. Governments have relied, from time to time, on ad hoc reviews to provide advice on the adequacy of disability pensions.

This Association considers that there is a need for the creation of a permanent and independent tribunal charged with determining, from time to time, the need or otherwise for increases in veterans' disability pensions. The findings of such a tribunal should have the same authority as those of the Fair Work Commission.

QUESTION

Is access to compensation benefits fair and timely? In particular, are there challenges associated with the requirements in the MRCA and DRCA that impairments be permanent and stable to receive permanent impairment compensation? How could these provisions be improved?

VVAA Response:

The use of a criteria that requires a condition to be permanent and stable is unreasonable. Permanent indicates there can never be any recovery and Stable seems to be interpreted as there will never be a change in the condition. These are unreasonable expectations.

The Veterans Entitlement Act 1986 guidelines for compensation are more realistic, if there is a condition at the time of assessment, compensation is assessed at that time, if matters change, the assessment is reviewed.

QUESTION

Is there scope to better align the compensation received under the VEA, MRCA and DRCA? In particular, could the provisions for permanent impairment compensation and incapacity payments in the MRCA and DRCA be made consistent?

VVAA Response:

To apply incapacity payments and permanent impairment assessment to older veterans under the VEA would mean they would be disadvantaged and would not be acceptable to this Association or fair to this ageing cohort of veterans. The current assessment of a general rate, increasing to a special rate under certain conditions is fair and reasonable

QUESTION

Are there complications caused by the interaction of compensation with military superannuation? How could these be addressed?

VVAA Response:

Reducing compensation because a veteran has other income, including superannuation is unreasonable, a veteran could have an unlimited income stream from other sources and is not penalised, if he receives military superannuation, (that he contributed to) he is penalised?

QUESTION

What is the rationale for different levels of compensation to veterans with different types of service in the MRCA? Should these differences continue?

VVAA Response:

Compensation for injury or disease should be based on medical evidence and assessment, not on type of service except that operational or war service should be treated more beneficially.

QUESTION

Is health care for veterans, including through the gold and white cards, provided in an effective and efficient manner? Has the non-liability coverage of mental health through the white card been beneficial?

VVAA Response:

The provision of medical treatment through treatment cards is effective, white cards could indicate what treatment is covered to avoid confusion on entitlements. As treatment is not delivered by DVA but by medical professionals the question of efficiency is not addressed in this submission.

In our view the reasons for the policy for the provision of non-liability health care, particularly for mental health conditions, has not been explained fully by DVA and it is therefore difficult to measure against what it may or may not be an improvement.

QUESTION

Is there scope to simplify the range of benefits available, and how they are administered? Are all the payments available necessary and beneficial? Are they achieving value for money outcomes?

VVAA Response:

The range of benefits provided by DVA have been established over many years based on the perceived needs of veterans. By definition any suggestion of simplification implies an intent to reduce some of those benefits.

Generally, benefits should be linked to the medical condition of the veteran and if the need for a veteran is higher the benefits should be expanded.

QUESTION

*What are the benefits of having generally available income support payments also available to veterans through DVA?
What are the costs?*

VVAA Response:

Any income support payments available through DVA should only be those linked to the effect of military service not to a later ability or desire to work.

Representing the V.V.A.A. I am available to discuss this submission at your convenience if required.

Yours sincerely

Ken Foster OAM JP
National President
Vietnam Veterans Association of Australia